

Ecuador

PEACE, FRIENDSHIP, NAVIGATION, AND COMMERCE

Treaty signed at Quito June 13, 1839

Senate advice and consent to ratification July 15, 1840

Ratified by the President of the United States July 31, 1840

Ratified by Ecuador February 19, 1842

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Proclaimed by the President of the United States September 23, 1842

*Provisions relating to commerce and navigation terminated August 25,
1892*¹

8 Stat. 534; Treaty Series 76²

TREATY OF PEACE, FRIENDSHIP, NAVIGATION AND COMMERCE, BETWEEN THE UNITED STATES OF AMERICA AND THE REPUBLIC OF ECUADOR

The United States of America and the Republic of Ecuador, desiring to make lasting and firm, the friendship and good understanding which happily prevails between both nations, have resolved to fix, in a manner, clear, distinct and positive, the rules which shall, in future, be religiously observed between the one and the other, by means of a treaty of friendship, commerce and navigation. For this most desirable object, the President of the United States of America, has conferred full powers on James C. Pickett, a citizen of the said States, and the President of the Republic of Ecuador, on Doctor Luis de Saa, Minister of Finance, charged with the Department of the Interior and Foreign Relations; who, after having exchanged their said full powers, in due and proper form, have agreed to the following articles:

¹ Pursuant to notice of termination by Ecuador dated July 17, 1891.

² For a detailed study of this treaty, see 4 Miller 207.

ARTICLE 1

There shall be a perfect, firm and inviolable peace and sincere friendship, between the United States of America and the Republic of Ecuador, in all the extent of their possessions and territories, and between their people and citizens, respectively, without distinction of persons or places.

ARTICLE 2

The United States of America and the Republic of Ecuador, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy, frank and equally friendly with all, engage mutually, not to grant any particular favor to other nations, in respect of commerce and navigation, which shall not immediately become common to the other party, who shall enjoy the same freely, if the concession was freely made, or, on allowing the same compensation, if the concession was conditional.

ARTICLE 3

The two high contracting parties, being likewise desirous of placing the commerce and navigation of their respective countries on the liberal basis of perfect equality and reciprocity, mutually agree, that the citizens of each, may frequent all the coasts and countries of the other, and reside and trade there, in all kinds of produce, manufactures and merchandise; and they shall enjoy all the rights, privileges and exemptions, in navigation and commerce, which native citizens do, or shall enjoy, submitting themselves to the laws, decrees and usages there established, to which native citizens are subjected: but it is understood, that this article does not include the coasting trade of either country, the regulation of which is reserved, by the parties respectively, according to their own separate laws. And it is further agreed, that this article shall be subject to the following modification; that whereas by a law of Ecuador of March 21st. 1837, vessels built in the dockyard of Guayaquil, shall be exempted from various charges, therefore, vessels of the United States cannot claim this privilege, but shall enjoy it if it should be granted to vessels belonging to Spain, or to Mexico and to the other Hispano-American Republics.

ARTICLE 4

They likewise agree, that whatever kind of produce, manufactures or merchandise of any foreign country can be, from time to time, lawfully imported into the United States, in their own vessels, may be also imported in the vessels of the Republic of Ecuador; and that no higher or other duties upon the tonnage of the vessel and her cargo, shall be levied and collected, whether the importation be made in the vessels of the one country or of the other: and, in like manner, that whatever kind of produce, manufactures or merchandise of any foreign country, can be, from time to time, lawfully imported

into the Republic of Ecuador in its own vessels, may be also imported in vessels of the United States; and that no higher or other duties upon the tonnage of the vessel and her cargo, shall be levied or collected, whether the importation be made in vessels of the one country or of the other. And they agree, that whatever may be lawfully exported or re-exported from the one country in its own vessels, to any foreign country, may, in like manner, be exported or re-exported in the vessels of the other country. And the same bounties, duties and drawbacks shall be allowed and collected, whether such exportation, or re-exportation be made in vessels of the United States, or of the Republic of Ecuador.

ARTICLE 5

For the better understanding of the preceding article, and taking into consideration, the actual state of the commercial marine of Ecuador, it has been stipulated and agreed, that all vessels belonging exclusively to a citizen or citizens of said Republic, and whose captain is also a citizen of the same, though the construction or the crew are, or may be foreign, shall be considered for all the objects of this treaty, as an Ecuadorian vessel.

ARTICLE 6

No higher or other duties shall be imposed on the importation into the United States, of any articles, the produce or manufactures of the Republic of Ecuador; and no higher or other duties shall be imposed on the importation into the Republic of Ecuador, of any articles the produce or manufactures of the United States, than are, or shall be payable on the like articles, being the produce or manufactures of any other foreign country; nor shall any higher or other duties or charges be imposed in either of the two countries, on the exportation of any articles to the United States or to the Republic of Ecuador, respectively, than such as are payable on the exportation of the like articles to any other foreign country; nor shall any prohibition be imposed on the exportation or importation of any articles the produce or manufactures of the United States or of the Republic of Ecuador, to or from the territories of the United States, or to or from the territories of the Republic of Ecuador, which shall not equally extend to all other nations.

ARTICLE 7

It is likewise agreed, that it shall be wholly free for all merchants, commanders of ships and other citizens of both countries, to manage themselves, their own business, in all the ports and places subject to the jurisdiction of each other, as well with respect to the consignment and sale of their goods and merchandise by wholesale or retail, as with respect to the loading, unloading and sending off their ships; they being in all these cases to be treated as citizens of the country in which they reside, or, at least, to be placed on a footing with the subjects or citizens of the most favored nation. They shall be subject, how-

ever, to such general taxes and contributions, as are, or may be established by law.

ARTICLE 8

The citizens of neither of the contracting parties, shall be liable to any embargo, nor be detained with their vessels, cargoes, merchandises, or effects for any military expedition, nor for any public or private purpose whatever, without allowing to those interested, a sufficient indemnification.

ARTICLE 9

Whenever the citizens of either of the contracting parties, shall be forced to seek refuge or asylum, in the rivers, bays, ports or dominions of the other, with their vessels, whether merchant or of war, public or private, through stress of weather, pursuit of pirates or enemies, they shall be received and treated with humanity; giving to them all favor and protection for repairing their ships, procuring provisions, and placing themselves in a situation to continue their voyage, without obstacle or hindrance of any kind.

ARTICLE 10

All the ships, merchandise, and the effects belonging to the citizens of one of the contracting parties, which may be captured by pirates, whether within the limits of its jurisdiction or on the high seas, and may be carried or found in the rivers, roads, bays, ports or dominions of the other, shall be delivered up to the owners, they proving, in due and proper form, their rights, before the competent tribunals; it being well understood, that the claim should be made within the term of one year, by the parties themselves, their attorneys, or agents of their respective governments.

ARTICLE 11

When any vessels belonging to the citizens of either of the contracting parties, shall be wrecked, foundered, or shall suffer any damage on the coasts or within the dominions of the other, there shall be given to them, all assistance and protection in the same manner which is usual and customary with the vessels of the nation where the damage happens, permitting them to unload the said vessel, if necessary of its merchandise and effects, without exacting for it, any duty, impost, or contribution whatever, unless they be destined for consumption.

ARTICLE 12

The citizens of each of the contracting parties shall have power to dispose of their personal goods within the jurisdiction of the other, by sale, donation, testament or otherwise, and their representatives, being citizens of the other party, shall succeed to their said personal goods, whether by testament or *ab intestato*, and they may take possession thereof, either by themselves or by

others acting for them, and dispose of the same at their will, paying such duties only, as the inhabitants of the country wherein the said goods are, shall be subject to pay in like cases. And if in the case of real estate, the said heirs would be prevented from entering into the possession of the inheritance on account of their character of aliens, there shall be granted to them, the term of three years, to dispose of the same as they may think proper, and to withdraw the proceeds without molestation, nor any other charges than those which are imposed by the laws of the country.

ARTICLE 13

Both the contracting parties promise and engage, formally, to give their special protection to the persons and property of the citizens of each other, of all occupations, who may be in the territories subject to the jurisdiction of the one or the other, transient or dwelling therein, leaving open and free to them, the tribunals of justice, for their judicial recourse, on the same terms which are usual and customary with the natives or citizens of the country, in which they may be; for which they may employ in defence of their rights, such advocates, solicitors, notaries, agents and factors, as they may judge proper, in all their trials at law; and such citizens or agents shall have free opportunity to be present at the decisions and sentences of the tribunals, in all cases which may concern them; and likewise at the taking of all examinations and evidence which may be exhibited on the said trials.

ARTICLE 14

It is likewise agreed that the most perfect and entire security of conscience may be enjoyed by the citizens of both the contracting parties, in the countries subject to the jurisdiction of the one & the other, without their being liable to be disturbed or molested on account of their religious belief, so long as they respect the laws and established usages of the country. Moreover, the bodies of the citizens of one of the contracting parties, who may die in the territories of the other, shall be buried in the usual burying grounds, or in other decent or suitable places, and shall be protected from violation or disturbance.

ARTICLE 15

It shall be lawful for the citizens of the United States of America and of the Republic of Ecuador, to sail with their ships, with all manner of liberty and security, no distinction being made who are the proprietors of the merchandises laden thereon, from any port, to the places of those who now are, or hereafter shall be at enmity with either of the contracting parties. It shall likewise be lawful, for the citizens aforesaid, to sail with their ships and merchandises before mentioned, and to trade with the same liberty and security from the places, ports and havens of those who are enemies of both, or either party, without any opposition or disturbance whatsoever; not only directly

from the places of the enemy before mentioned, to neutral places, but also from one place belonging to an enemy, to another place belonging to an enemy, whether they be under the jurisdiction of one power, or under several. And it is hereby stipulated, that free ships shall also give freedom to goods, and that every thing shall be deemed free and exempt, which shall be found on board the ships belonging to the citizens of either of the contracting parties, although the whole lading, or any part thereof, should appertain to the enemies of either; contraband goods being always excepted. It is also agreed in like manner, that the same liberty shall be extended to persons who are on board a free ship, with this effect, that, although they may be enemies to both, or either party, they are not to be taken out of that free ship, unless they are officers or soldiers, and in the actual service of the enemies. Provided however, and it is hereby agreed that the stipulations in this article contained, declaring that the flag shall cover the property, shall be understood as applying to those powers only, who recognize this principle; but if either of the two contracting parties shall be at war with a third, and the other neutral, the flag of the neutral shall cover the property of enemies, whose governments acknowledge this principle, and not of others.

ARTICLE 16

It is likewise agreed that in the case where the neutral flag of one of the contracting parties shall protect the property of the enemies of the other, by virtue of the above stipulations, it shall always be understood, that the neutral property found on board such enemy's vessels, shall be held and considered as enemy's property, and as such, shall be liable to detention and confiscation; except such property as was put on board such vessel before the declaration of war, or even afterwards, if it were done without the knowledge of it: but the contracting parties agree, that six months having elapsed after the declaration, their citizens shall not plead ignorance thereof. On the contrary, if the flag of the neutral does not protect the enemy's property, in that case, the goods & merchandises of the neutral, embarked in such enemy's ship, shall be free.

ARTICLE 17

This liberty of navigation and commerce, shall extend to all kinds of merchandise, excepting those only, which are distinguished by the name of contraband: and under this name of contraband or prohibited goods, shall be comprehended:

1st. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fuses, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberds, and grenades; bombs, powder, matches, balls, and all other things belonging to the use of these arms.

2nd. Bucklers, helmets, breastplates, coats of mail, infantrybelts, and clothes made up in military form and for military use.

3rd. Cavalry belts, and horses with their furniture.

4th. And generally, all kinds of arms and instruments of iron, steel, brass, and copper, or of any other materials, manufactured, prepared and formed expressly to make war, by sea or land.

ARTICLE 18

All other merchandises and things, not comprehended in the articles of contraband explicitly enumerated and classified as above, shall be held and considered as free, and subjects of free and lawful commerce, so that they may be carried and transported in the freest manner, by the citizens of both the contracting parties, even to places belonging to an enemy; excepting only, those places, which are, at that time, besieged or blockaded: and to avoid all doubt in this particular, it is declared that those places only are besieged or blockaded which are actually attacked by a belligerent force capable of preventing the entry of a neutral.

ARTICLE 19

The articles of contraband before enumerated and classified, which may be found in a vessel bound for an enemy's port, shall be subject to detention and confiscation, leaving free the rest of the cargo and the ship, that the owners may dispose of them as they may see proper. No vessel of either of the two nations shall be detained on the high seas, on account of having on board, articles of contraband, whenever the master, captain or supercargo of said vessel, will deliver up the articles of contraband to the captor, unless the quantity of such articles be so great or of so large a bulk, that they cannot be received on board the capturing ship, without great inconvenience; but in this and in all other cases of just detention, the vessel detained shall be sent to the nearest convenient and safe port, for trial and judgment according to law.

ARTICLE 20

And whereas it frequently happens, that vessels sail for a port or places belonging to an enemy, without knowing that the same is besieged, blockaded or invested, it is agreed that every vessel so circumstanced, may be turned away from such port or place, but shall not be detained, nor shall any part of her cargo, if not contraband, be confiscated; unless after warning of such blockade or investment, from any officer commanding a vessel of the blockading forces, they shall again attempt to enter; but she shall be permitted to go to any other port or place, she shall think proper. Nor shall any vessel of either, that may have entered into such port before the same was actually besieged, blockaded or invested by the other, be restrained from quitting such place with her cargo; nor, if found therein, after the reduction and surrender, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ARTICLE 21

In order to prevent all kinds of disorder, in the visiting and examination of the ships and cargoes of both the contracting parties, on the high seas, they have agreed, mutually, that, whenever a vessel of war, public or private, shall meet with a neutral of the other contracting party, the first shall remain out of cannon shot, and may send its boats with two or three men only, in order to execute the said examination of the papers, concerning the ownership and cargo of the vessel, without causing the least extortion, violence or ill-treatment, for which, the commanders of the said armed ships, shall be responsible, with their persons and property: for which purpose, the commanders of the said private armed vessels shall, before receiving their commissions, give sufficient security, to answer for all the damages, they may commit; and it is expressly agreed, that the neutral party shall, in no case, be required to go on board the examining vessel, for the purpose of exhibiting his papers, or for any other purpose whatever.

ARTICLE 22

To avoid all kinds of vexation and abuse, in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the two contracting parties, they have agreed and do agree, that in case one of them should be engaged in war, the ships and vessels belonging to the citizens of the other, must be furnished with sea-letters or passports, expressing the name, property and bulk of the ships; as also, the name and place of habitation of the master and commander of said vessel, in order that it may thereby appear that said ship truly belongs to the citizens of one of the parties; they have likewise agreed, that such ships being laden, besides the said sea-letters or passports, shall also be provided with certificates containing the several particulars of the cargo, and the place whence the ship sailed, so that it may be known whether any forbidden or contraband goods be on board the same; which certificates shall be made out by the officers of the place whence the ship sailed, in the accustomed form: without such requisites said vessels may be detained, to be adjudged by the competent tribunal, and may be declared legal prize, unless the said defect shall be proved to be owing to accident, and satisfied or supplied by testimony entirely equivalent.

ARTICLE 23

It is further agreed that the stipulations above expressed relative to the visiting and examination of vessels, shall apply only to those which sail without convoy, & when said vessels shall be under convoy, the verbal declaration of the commander of the convoy, on his word of honor, that the vessels under his protection belong to the nation whose flag he carries; and when they are bound to an enemy's port, that they have no contraband goods on board, shall be sufficient.

ARTICLE 24

It is further agreed, that in all cases, the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them; and whenever such tribunals, of either party, shall pronounce judgment against any vessel, or goods or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives, on which the same shall have been founded, and an authenticated copy of the sentence or decree, and of all the proceedings in the case, shall, if demanded, be delivered to the commander or agent of said vessel, without any delay, he paying the legal fees for the same.

ARTICLE 25

Whenever one of the contracting parties shall be engaged in war with another State, no citizen of the other contracting party shall accept a commission or letter of marque, for the purpose of assisting or co-operating hostilely with the said enemy, against the said party so at war, under the pain of being considered as a pirate.

ARTICLE 26

If, by any fatality, which cannot be expected, and which God forbid, the two contracting parties should be engaged in a war with each other, they have agreed, and do agree, now for then, that there shall be allowed the term of six months to the merchants residing on the coasts and in the ports of each other, and the term of one year to those who dwell in the interior, to arrange their business and transport their effects, wherever they please, giving to them, the safe-conduct necessary for it, which may serve as a sufficient protection, until they arrive at the designated port. The citizens of all other occupations, who may be established in the territories or dominions of the United States and the Republic of Ecuador, shall be respected, and maintained in the full enjoyment of their personal liberty and property, unless their particular conduct shall cause them to forfeit this protection, which, in consideration of humanity, the contracting parties engage to give them.

ARTICLE 27

Neither the debts due from individuals of the one nation to the individuals of the other, nor shares, nor moneys which they may have in public funds, nor in public nor private banks, shall ever, in any event of war, or of national difference, be sequestered or confiscated.

ARTICLE 28

Both the contracting parties being desirous of avoiding all inequality in relation to their public communications and official intercourse, have agreed

and do agree, to grant to the envoys, ministers and other public agents, the same favors, immunities and exemptions, which those of the most favored nation do or shall enjoy: it being understood, that whatever favors, immunities or privileges, the United States of America or the Republic of Ecuador may find it proper to give to the ministers and other public agents of any other power, shall, by the same act be extended to those of each of the contracting parties.

ARTICLE 29

To make more effectual the protection which the United States and the Republic of Ecuador shall afford in future, to the navigation and commerce of the citizens of each other, they agree to receive and admit consuls and vice-consuls, in all the ports open to foreign commerce, who shall enjoy in them, all the rights, prerogatives and immunities of the consuls and vice-consuls of the most favored nation; each contracting party, however, remaining at liberty to except those ports and places, in which the admission and residence of such consuls and vice-consuls, may not seem convenient.

ARTICLE 30

In order that the consuls and vice-consuls of the two contracting parties, may enjoy the rights, prerogatives and immunities which belong to them by their public character, they shall, before entering on the exercise of their functions, exhibit their commission or patent in due form to the Government to which they are accredited, and, having obtained their *exequatur*, they shall be held and considered as such, by all the authorities, magistrates and inhabitants in the consular district in which they reside.

ARTICLE 31

It is likewise agreed that the consuls, their secretaries, officers and persons attached to the service of consuls, they not being citizens of the country in which the consul resides, shall be exempted from all kinds of taxes, imposts and contributions, except those which they shall be obliged to pay on account of commerce or their property, to which the citizens and inhabitants, native and foreign, of the country in which they reside, are subject; being in every thing besides, subject to the laws of the respective States. The archives and papers of the consulates shall be respected inviolably, and, under no pretext whatever, shall any magistrate seize, or in any way interfere with them.

ARTICLE 32

The said consuls shall have power to require the assistance of the authorities of the country, for the arrest, detention and custody, of deserters from the public and private vessels of their country, and for that purpose, they shall address themselves to the courts, judges and officers competent, and shall demand the said deserters in writing; proving by an exhibition of the register

of the vessel's or ship's roll, or other public documents, that those men were part of the said crews, and on this demand so proved, (saving, however, where the contrary is proved,) the delivery shall not be refused. Such deserters, when arrested, shall be put at the disposal of said consuls, and may be put in the public prisons, at the request and expense of those who reclaim them, to be sent to the ships to which they belonged, or to others of the same nation. But if they be not sent back within two months, to be counted from the day of their arrest, they shall be set at liberty, and shall be no more arrested for the same cause.

ARTICLE 33

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree, as soon hereafter as circumstances will permit them, to form a consular convention, which shall declare especially, the powers and immunities of the consuls and vice-consuls of the respective parties.

ARTICLE 34

It is further agreed, that the words, '*most favored nation*', that occur in this treaty, shall not be so construed as to prevent either of the contracting parties, from concluding any treaty or convention, with any other nation or state, it may think proper, as freely and as fully as though said words were not used: Provided however, that notwithstanding any such treaty or convention, the citizens of the United States shall be placed in Ecuador, with respect to navigation and commerce, upon an equal footing with the subjects of Spain and with the citizens of Mexico and of the other Hispano-American States, with which treaties have been, or may be, concluded; and that the citizens of Ecuador shall be entitled to enjoy, in the United States, the same rights and privileges, with respect to navigation and commerce, that the citizens of the United States enjoy, or shall enjoy, in Ecuador.

ARTICLE 35

The United States of America and the Republic of Ecuador, desiring to make as durable, as circumstances will permit, the relations which are to be established between the two parties, by virtue of this treaty of peace, amity, commerce and navigation, have declared solemnly, and do agree to the following points:

1st. The present treaty shall remain in full force and virtue for the term of twelve years, to be counted from the day of exchange of the ratifications, and further, until the end of one year, after either of the contracting parties shall have given notice to the other, of its intention to terminate the same; each of the contracting parties reserving to itself, the right of giving such notice to the other at the end of said term of twelve years: And it is hereby agreed between them, that on the expiration on one year, after such notice

shall have been received by either, from the other party, this treaty, in all its parts relative to commerce and navigation, shall altogether cease and determine, and in all those parts which relate to peace and friendship, it shall be perpetually and permanently binding on both powers.

2nd. If any one or more of the citizens of either party, shall infringe any of the articles of this treaty, such citizen shall be held personally responsible for the same, and harmony and good correspondence between the two nations shall not be interrupted thereby, each party engaging in no way to protect the offender, or sanction such violation.

3rd. If, (what indeed cannot be expected) unfortunately, any of the articles contained in the present treaty, shall be violated or infringed in any way whatever, it is expressly stipulated, that neither of the contracting parties will order or authorize any act of reprisal, nor declare war against the other on complaints of injuries or damages, until the said party considering itself offended, shall first have presented to the other, a statement of such injuries or damages, verified by competent proofs, and demanded justice, and the same shall have been either refused or unreasonably delayed.

4th. Nothing in this treaty shall, however, be construed or operate contrary to former and existing public treaties with other sovereigns and states.

The present treaty of peace, amity, commerce and navigation, shall be approved and ratified by the President of the United States of America, by and with the advice and consent of the Senate thereof, and by the President of the Republic of Ecuador, with the consent and approbation of the Congress of the same; and the ratifications shall be exchanged in the city of Quito, within three years, to be counted from the date of the signature hereof, or sooner, if possible.

In faith whereof, we, the Plenipotentiaries of the United States of America and of the Republic of Ecuador, have signed and sealed these presents.

Done in the city of Quito, on the thirteenth day of June, in the year of our Lord, one thousand eight hundred and thirty-nine, and in the sixty third year of the Independence of the United States of America and the twenty ninth of that of the Republic of Ecuador.

J. C. PICKETT [SEAL]

LUIS DE SAA [SEAL]